



National Contact Point

OECD Guidelines for Multinational Enterprises

Final Statement

Friends of the Earth Europe and Friends of the Earth
Netherlands/Milieudefensie - Rabobank

15 January 2016

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Final statement by the Dutch National Contact Point ('NCP') for the OECD Guidelines for Multinational Enterprises ('the Guidelines') further to a specific instance submitted by Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie ('FoE') concerning an alleged breach of the Guidelines by Rabobank.

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Introduction

This final statement describes the process and outcomes of the dialogue facilitated by the NCP after receipt of the specific instance from FoE on 27 June 2014.

It is based on the information received from the parties and the outcomes of the dialogue. Confidential information disclosed to the NCP in the course of the dialogue has not been used in the preparation of this final statement.

This final statement marks the completion of the procedure by the NCP.

The NCP procedure

The Dutch NCP procedure in this specific instance

On 27 June 2014, the NCP received a specific instance from FoE concerning an alleged breach of the Guidelines by Rabobank. On 7 July 2014 the NCP acknowledged receipt of this specific instance and forwarded it to Rabobank.

In August 2014 the NCP held separate meetings with FoE and Rabobank about the procedure for consideration of the specific instance.

On 1 September 2014, the NCP sent the parties a draft version of the initial assessment with a request to submit any comments within two weeks.

Both parties accepted the NCP's offer and made agreements concerning confidentiality and transparency in line with the NCP procedure.

In September 2014 the NCP convened the first joint meeting of both parties to discuss the specific instance.

On 16 December 2014, the NCP published its initial assessment on the website www.oecdguidelines.nl. In its initial assessment, the NCP concluded that at least part of this specific instance merits further consideration and offered its good offices to resolve the issue at hand by facilitating a dialogue between the parties.

Between January 2015 and June 2015, there were a number of follow-up meetings attended by both parties to draw up the terms of reference and conduct a dialogue. In July and August 2015 the dialogue phase was rounded off with separate meetings between the NCP and each party.

Details of the parties submitting the specific instance

Friends of the Earth Europe is an environmental network in Europe, uniting more than 30 national organisations in Europe with thousands of local groups. Friends of the Earth International has a total of two million members. Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie work closely together with Friends of the Earth Indonesia/WALHI and is representing this organisation in this case. Its interest in this case is that it campaigns on environmental and social issues.¹

Details of the enterprise

Rabobank is a multinational enterprise according to the Guidelines. Rabobank is one of the largest cooperatives in the Netherlands with nearly two million members (and is not therefore a shareholder-driven business). Measured by Tier 1 capital, the Rabobank Group is one of the world's largest financial institutions.²

The NCP's assessment of the specific instance

Scope of the assessment

During the preliminary discussions on the initial assessment, Bumitama Agri Ltd announced that, as of 31 July 2014, had terminated the Golden Youth Cooperation Agreement regarding the management and operation of the Golden Youth plantation and claimed to have stopped purchasing Fresh Fruit Bunches from this plantation. Part of the issue raised by the specific instance has therefore been addressed.

In its initial assessment of 16 December 2014, the NCP concluded that part of this specific instance merited further consideration. In accordance with the NCP specific instance procedure, the NCP therefore offered its good offices in order to bring the parties to an agreement on its recommendations regarding the implementation of Rabobank's palm oil supply chain policy.

The NCP is of the opinion that doing so may help clarify the OECD due diligence recommendations for the financial sector regarding loans.

Both parties accepted the NCP's offer to engage in a dialogue.

Applicability of the guidelines to the financial sector

The 2011 update of the Guidelines confirmed that they apply to all sectors, including the financial sector. The Guidelines do not provide more detailed guidance on their application to financial institutions or any other specific sector, but they do state that enterprises should:

'Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.'

The reference to services means that paragraph 12 (in Chapter II, General Policies) of the Guidelines is applicable to any financial service, including lending. It follows that services of this kind are part of a business relationship.

Relevant OECD Guidelines for Multinational Enterprises

The chapters on General Policies (Chapter II) and Disclosure (Chapter III) of the Guidelines are relevant to this dialogue.

The palm oil industry

Palm oil is the most consumed and processed vegetable oil in the world. It is used in large quantities in the food industry as it is a relatively inexpensive product with many applications. Its use as a biofuel is also increasing. The palm oil industry employs millions of people. Demand for palm oil continues to rise. The downside of its large-scale use is the expansion of palm oil plantations, for instance in Southeast Asia, accompanied by extensive deforestation, environmental problems, air pollution and health risks caused by burning forests and land expropriation. It is thus essential that palm oil production and trade is sustainable. A commitment to sustainability on the part of NGOs and enterprises, whether joint or otherwise, is therefore vital. Part of the industry, together with some NGOs and financial institutions have committed to sustainability as, for example reflected in the principles and criteria of the RSPO, that aims to develop, implement, verify assure and periodically review credible global standards for the entire supply chain of sustainable palm oil.

Rabobank's position on palm oil

Rabobank's stated ambition is to play a key role in the food and agri sector globally. Palm oil is a big and growing industry within that sector. Rabobank wants to finance companies in this field that are in the process of making their business operations and their industry more sustainable, thus combining a contribution to important societal goals with responsible business practices. Rabobank believes innovative companies are crucial, partly

¹ <http://www.foeeurope.org/about>, <https://milieudefensie.nl/>

² <https://www.rabobank.com/en/about-rabobank/profile/who-we-are/index.html>

because they produce – by resource-efficient and land-efficient means – the vegetable oils and fats needed to feed a growing population, while minimising the negative impact on people and planet. In financing companies that are active in the palm oil industry, Rabobank applies its code of conduct and palm oil policy. Furthermore, Rabobank is a member of the Round Table for Responsible Palm Oil (RSPO), a global multi-stakeholder initiative to transform the market towards the production and use of certified sustainable palm oil. As a member, Rabobank has adopted the RSPO principles and criteria as its minimum standard for sustainable oil palm development and follows RSPO procedures and requires that its business customers apply the RSPO principles and criteria. Environmental and social impact assessments are made publicly available and experts and stakeholders are invited to submit comments in order to improve the assessments where this is deemed necessary, so that any potential issues can be resolved before planting has started. RSPO also offers a grievance mechanism to affected stakeholders. Rabobank has invited FoE to work with it on the continuous improvement of the industry through the RSPO and the improvement of the RSPO process and grievance mechanism itself.

Friends of the Earth's position on palm oil

FoE challenges the concept of sustainable palm oil production and trade, because in their experience the mere scale of the sector makes it impossible to produce palm oil sustainable.

FoE approaches Dutch financiers of internationally operating companies that process palm oil for biomass and other products to ask them to take responsibility for the environmental and social problems that they cause through the production and sale of palm oil. It urges the companies for instance to stop importing and producing unsustainable palm oil and expanding plantations at the expense of forests, peatlands and people. As part of its efforts, FoE also holds the financial sector to account for the latter's role in financing the palm oil industry.

FoE is not a member of the RSPO and emphasises that there are serious problems with the functioning of the RSPO complaints panel, with how complaints are dealt with and with how results and/or outcomes are monitored and enforced. Furthermore, in this procedure FoE refers to publications by Greenpeace and the Forest People's Programme.³

FoE argues that the problems in the palm oil sector are long standing and, despite sustainability pledges by both companies and its financiers, serious environmental and human rights problems persevere in the different countries where palm oil is being produced. FoE therefore campaigns for an alternative agricultural model, in which smallholders and agro-ecology are

being supported by government, instead of large scale plantations. Research has indicated that smallholders can feed the world.

The NCP's good offices

The course of the dialogue

The parties in the dialogue facilitated by the NCP were FoE and Rabobank. The NCP held joint meetings between September 2014 and June 2015, and two separate meetings with each party in turn in July and August to round off the dialogue procedure. The parties jointly set the agenda and the terms of reference for the dialogue, and agreed on confidentiality and transparency matters in light of Rabobank's client confidentiality obligations, in line with the NCP procedure.

The outcomes of the dialogue

The purpose and scope of the dialogue were:

- to resolve the issue at hand through a dialogue between the parties facilitated by the NCP;
- to focus on the content, implementation and monitoring of Rabobank's Palm Oil Supply Chain Policy and other relevant environmental, social and governance factors with regard to this policy. This includes the general way Rabobank handles complaints, whether through the RSPO or otherwise;
- to discuss FoE's findings and recommendations and Rabobank's possible adoption of these recommendations;
- to bring the parties to an agreement on the NCP's recommendations concerning the content, implementation and monitoring of a palm oil supply chain policy in the light of the Guidelines and the RSPO principles and criteria for certified sustainable palm oil;
- to clarify the OECD due diligence recommendations for the financial sector regarding loans.

The NCP's observations

The NCP appreciates the willingness of Rabobank and FoE, even once the principal reason for FoE's submission of this specific instance had been addressed (when the Golden Youth Cooperation Agreement was terminated by Bumitama Agri Group) to enter into a dialogue on improving Rabobank's palm oil policy and addressing wider issues in the palm oil industry.

During the dialogue it became apparent that the two parties take fundamentally different views on palm oil and its use. It was clear that FoE has no confidence in the large-scale palm oil industry in its current form. FoE's view is based on the findings of various reports drawn up by both its own and other organisations. FoE advocates the small-scale production of sustainable palm oil. Rabobank aims to play a key role in the food and agri sector globally, within which palm oil is a big and growing industry.

³ <http://www.greenpeace.de/files/publications/rspo-certifying-destruction.pdf>
<http://www.forestpeoples.org/topics/responsible-finance/private-sector/palm-oil-rspo>

Rabobank wishes to operate in this industry as an inclusive bank for businesses that share its objective of doing business sustainably.

The NCP respects the parties' diverging views and sympathises with their underlying motivations. At the same time, like the parties, the NCP understands that these diverging positions make it difficult to agree on recommendations regarding the purpose and scope of the dialogue. It became clear to the NCP during the dialogue that both parties pursue the goal of sustainable palm oil but that each does so in its own way. It also became clear that there is an irreconcilable difference of opinion between the parties concerning the feasibility of large-scale sustainable palm oil production. Nevertheless, the parties reached agreement on the points below. The NCP has made some additional recommendations to clarify the OECD due diligence recommendations for the financial sector regarding loans.

Points of agreement

The parties have agreed that:

- a critical view on the sustainability of palm oil production is imperative, in view of the issues relating to the use of the environment and land.
- Rabobank maintains its dialogue with external stakeholders on the basis of concrete evidence of non-compliance by Rabobank's clients in the palm oil industry.

Rabobank's policies and procedures

Rabobank states it expects its clients to respect rights and to obtain free, prior and informed consent (FPIC) as a part of and guided by the RSPO principles & criteria and as part of the environmental and social impact assessment (ESIA) process prior to embarking on a new palm oil development.

- Rabobank will address the consequences of non-compliance with the FPIC requirement in the provisions of its palm oil policy;
- Rabobank handles complaints concerning negative impacts caused by clients. Rabobank will modify its current approach to handling complaints. It will publish its complaints procedure, including a time frame for the procedure;

Recommendations of the NCP

The NCP is of the opinion that a forward-looking approach is important to make the palm oil industry more sustainable and makes the following recommendations.

RSPO

It is evident that the RSPO faces profound challenges with regard to the palm oil industry. Nevertheless, sustainable palm oil is the RSPO's objective and it aims to make continuous improvements. This is in line with the due diligence approach envisaged in the Guidelines. In that sense the RSPO's approach can be said to constitute good practice. Violations often take place across the whole sector. In case of (alleged) breaches of this good practice, the RSPO offers a grievance mechanism. In order to generate

sufficient leverage, a broad-based approach to these problems is required. The RSPO's multi-stakeholder approach is intended to fulfil this need. Also according to the Guidelines, enterprises should engage with relevant stakeholders and consider their view.⁴ The NCP therefore endorses the importance of the joint approach pursued by Rabobank via the RSPO. This does not alter the fact that financial institutions have a responsibility of their own to exercise individual leverage to seek to prevent or mitigate the impact of their business conduct and to increase their leverage if necessary with regard to their own clients. It is therefore important that businesses continue to develop their own policies in the light of practical experience that work towards a genuine sustainable production of palm oil. Under the OECD Guidelines businesses are encouraged to appropriate responses with regard to their business relationships, and are urged to engage in risk mitigation efforts, disengagement is seen as an option of last resort.⁵

Although disengagement is an option under the OECD Guidelines, the NCP is of the opinion that regarding this case disengagement of financial institutions that adhere to the RSPO principles will in general not benefit the goal of sustainability. It's the responsibility of financial institutions whether to respond to identified adverse impacts through engagement or divestment. According to the Guidelines, the enterprise should also take into account potential social and economic adverse impacts relate to the decision to disengage. The NCP stresses the importance of disengagement as a last resort.

Transparency and the OECD Guidelines

The transparency requirement placed on enterprises by the Guidelines has proved difficult to reconcile with the confidentiality which Rabobank is bound to observe with regard to its clients. The NCP believes that Rabobank must aspire to maximum transparency and consistency in its engagement in the light of the Guidelines and recommends that Rabobank devote more attention to this in its policy and procedures.

Initiatives in the sector

The NCP encourages financial institutions to actively take part in due diligence initiatives in the financial sector and in the industry. The NCP emphasizes that a constructive forward looking contribution of NGO's - like Friends of the Earth - to such initiatives can contribute to further steps in the financial sector. The OECD is engaging in a multi-stakeholder process to develop a guidance that will clarify the potential approaches for the application of due diligence for responsible business conduct (RBC) in the financial sector.⁶ Together with the Food and Agriculture Organisation of the UN (FAO) the OECD developed a

⁴ <http://mneguidelines.oecd.org/2011GeneralPolicies.pdf> (Chapter II: General Policies, para 14)

⁵ <https://mneguidelines.oecd.org/2011GeneralPolicies.pdf> (Chapter II: Commentary, para. 22)

⁶ <https://mneguidelines.oecd.org/rbc-financial-sector.htm>.

guidance for responsible agricultural supply chains to help enterprises and institutional investors observe responsible business conduct standards and undertake due diligence.⁷

Monitoring

The NCP offers its good offices for a dialogue on an evaluation at the end of 2017 of the outcomes of the dialogue, namely the agreements made by the parties and the NCP's recommendations, but also the concrete cases that were discussed in the meantime. It is important in this regard that FoE and Rabobank continue to carry on a constructive dialogue in the intervening period on the basis of practical experience and any concrete complaints of non-compliance by Rabobank's clients in the palm oil industry.

Both parties accepted the NCP's good offices for a dialogue on an evaluation. The evaluation will be conducted on mutually agreed Terms of reference at the end of 2017.

The evaluation will be published on the website of the NCP.

⁷ <http://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm>

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP which is responsible for its own procedures and decision making, in accordance with the Procedural Guidelines section of the Guidelines. In line with this, the Netherlands NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP.

More information on the OECD Guidelines and the NCP can be found on www.oecdguidelines

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